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EXAMINER	
ALVAREZ, RAQUEL	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PAUL H. FEINBERG

Appeal 2009-014778
Application 09/785,095
Technology Center 3600

Before JOHN A. JEFFERY, HUBERT C. LORIN, and JOSEPH A. FISCHETTI, *Administrative Patent Judges*.

FISCHETTI, *Administrative Patent Judge*.

DECISION ON APPEAL

The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the "MAIL DATE" (paper delivery mode) or the "NOTIFICATION DATE" (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Appellant seeks our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1-48. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

Claim 32, reproduced below, is representative of the subject matter on appeal.

> 32. A portable system for presenting information to a user comprising:
>
> a processor;
>
> a positioning system;
>
> input means for receiving information from a user;
>
> a display;
>
> a modem;
>
> instructions executable by said processor, said instructions comprising receiving a request for information from a user via said input means; retrieving the geographic location of said positioning system from said positioning system; sending said request and said geographic location to a server via said modem; receiving from said server requested information and location information, said requested information being responsive to said request and said location information being responsive to said geographic location; and displaying said requested information and said location information with a plurality of messages of a vendor to indicate a change in location of the portable device with respect to the vendor.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Hall	US 6,026,375	Feb. 15, 2000

Skillen WO 98/36366 A1 Aug. 20, 1998

The Examiner rejected claims 1-48 under 35 U.S.C. § 103(a) as being obvious in view of Skillen and Hall.

Each of the independent claims 1, 11, 22, 32 and 41 require in one form or another displaying or receiving at a portable device *a plurality of messages of a vendor to indicate a change in location of the portable device with respect to the vendor.*

The Examiner found with respect to this limitation that

> … Hall teaches the user receiving a first message about a local facility that can complete the order (col. 9, lines 19-32) and a subsequent message pertaining the current proximity of the local facility based on the updated time of arrival taking into account the user's current location in addition to the current user's speed and traveled routes (col. 10, lines 6-12). It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to have included in the system of Skillen the teachings of Hall of a first message of a vendor and a subsequent message of the vendor indicating a change in proximity of the user because such a modification would allow the user to know exactly how far and how close the user is getting to the local facility.

(Answer 4-5).

Appellant however argues:

> … [I]n Hall the mobile device is used to provide updated location information <u>to the service</u>

> provider (the SPAS of the SPS) and the service provider uses the information to update the customer's ETA. Therefore, no indication is provided to the customer of a change in proximity between the customer and the local facility. Rather, an indication is provided to the service provider of a change in proximity between the customer and local facility.

(Appeal Br. 9).

A review of Hall at column 10 lines 6-12 reveals that a customer who opts to maintain connection with the service provider's agent system (SPAS), continues to transmit customer location information to the SPAS. In so doing, the portable device (used by the customer) does not receive messaging *to indicate a change in location of the portable device with respect to the vendor,* but rather sends such information to the facility/vendor so that the vendor can have the order completed on the arrival of the customer at the facility (col. 5, ll. 24-29). It is not apparent, and the Examiner has not explained, how the proposed combination could be modified using the teaching of Hall to cause the user station in Skillen to be notified of *a change in the user location with respect to a vendor.*

In addition, the independent claims each also require two distinct types of information be transmitted to the portable device namely, requested information and location information. The requested information is responsive to a content request unrelated to location, and the location information, e.g., a banner advertisement, is responsive to the known geographic location of the portable device. (Spec. ¶ [0023]). Hall only deals

with location sensitive content based on the location of the portable device relative to desired location sensitive service facilities (col. 9, ll.19-21). Additionally, Skillen discloses a data processing device/customer device in the context of a PC, and not a portable device (Skillen, p. 6, l. 12), which would not lend itself to mobility during use.

We therefore will not sustain the rejection of independent claims 1, 11, 22, 32 and 41. Since claims 2-10, 12-21, 23-31, 33-40 and 42-48 depend from one of claims 1, 11, 22, 32 and 41 and since we cannot sustain the rejection of the independent claims, the rejection of dependent claims likewise cannot be sustained.

CONCLUSIONS OF LAW

We conclude the Appellant has shown that the Examiner erred in rejecting claims 1-48.

DECISION

The decision of the Examiner to reject 1-48 is REVERSED.

REVERSED

Appeal 2009-014778
Application 09/785,095

MP

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